

1 agree and, therefore, you'd show the NFL

2 Network without those additional games.

3 Correct?

4       A       Yes. Point of clarification, we

5 did not make an offer for an extension. I

6 tried to solicit discussions with the NFL to

7 discuss -

8               MR. PEREZ-MARQUES: Mr. Phillips,

9 please don't speak over the witness.

10              JUDGE SIPPEL: Yes, just don't

11 interrupt him when he's talking.

12              MR. PHILLIPS: Okay. I'm sorry.

13              JUDGE SIPPEL: Just answer the

14 question that you're asked.

15              THE WITNESS: All right.

16              BY MR. PHILLIPS:

17       Q       So, Mr. Bond, if you turned down

18 the surcharge offer from the NFL, you would

19 have carried the network without the games,

20 but also without paying for the surcharge.

21 Correct?

22       A       Yes.

1           Q       And you say that in that 10-year  
2 time, the 10-year extension after the  
3 surcharge notice, that you offered to increase  
4 distribution in connection with that proposal  
5 that you discussed?

6           A       No.

7           Q       Okay. I'm sorry. I thought I  
8 heard you say that after you got the  
9 surcharge, you tried to engage in negotiations  
10 with the NFL about extending the term for 10  
11 years.

12          A       That was what I was trying to  
13 clarify earlier. We didn't make an actual  
14 proposal. What I had tried to do was solicit  
15 the NFL in a discussion about a potential  
16 extension, so we didn't make an offer, they  
17 didn't make an offer to us. I was simply  
18 trying to engage in a negotiation.

19          Q       Neither side made an offer to each  
20 other at that time. Correct?

21          A       No, but I indicated that we would  
22 be willing to, at the right price, and on the

1 right terms, continue to carry the NFL

2 Network.

3           Q       And that's what I wanted to focus  
4 on for a second, because I believe you said  
5 that you indicated to the NFL that you were  
6 willing to increase distribution in connection  
7 with those negotiations. Correct?

8           A       Potentially.

9           Q       Yes. And was that increased  
10 distribution from the premium sports tier  
11 down, or was that to increase distribution  
12 from D2 forward? Which was it?

13          A       Above D2.

14          Q       So, broader distribution than D2.  
15 Right?

16          A       Correct.

17          Q       And that would have been broader  
18 distribution with D2 and accepting the games.  
19 Correct?

20          A       Yes.

21          Q       And if you had accepted the games,  
22 you understood that the price that you were

1 going to be paying for the NFL Network was  
2 going to be greater than the price that you  
3 were going to pay without the games. Correct?

4       A       Yes.

5       Q       But the negotiation that you  
6 referred to, neither side, either offered a  
7 price below the surcharge amount that they'd  
8 noticed you in those negotiations. Right?

9       A       The NFL really wasn't interested  
10 in engaging in negotiations.

11      Q       And you never offered a price  
12 either at that time to be fair. Correct?

13      A       No.

14      Q       And did you have a price in mind  
15 at that time?

16      A       No.

17      Q       Had you done any modeling of what  
18 a price would look like at that time?

19      A       No. We were rebuffed by the NFL,  
20 so it didn't go very far.

21      Q       So even before you mentioned that  
22 you were willing to do this, you hadn't

1 planned ahead to sort of see what kind of

2 price sensitivity there was?

3 A No.

4 Q Now, at the time that you

5 negotiated this contract in the first

6 instance, in 2004, you contemplated that live

7 games could be added to the NFL Network.

8 Correct?

9 A Yes.

10 Q And, indeed, there's a specific

11 section of the contract that address the

12 possibility of adding live games to the NFL

13 Network. Correct?

14 A Yes.

15 Q And, in fact, at that time, you

16 negotiated around price for if that happened

17 at a later date. Correct?

18 A Yes, you mean price, that

19 surcharge price?

20 Q Yes, the surcharge price.

21 Correct?

22 A Yes.

1           Q       And you and the NFL agreed that  
2 the price -- agreed upon a price cap at that  
3 time. Correct?

4           A       Yes.

5           Q       And, so you understood when you  
6 got the surcharge notice that there was --  
7 there had been a price negotiation that had  
8 resulted in a price cap for that surcharge.  
9 Correct?

10          A       Well, the provision of the  
11 contract provided a cap bounded by both MFN  
12 and a dollar cap.

13          Q       And at the time you got the  
14 surcharge notice in 2006, when they decided to  
15 put the live games on the network, and they  
16 contacted you about increasing their price to  
17 reflect that, which you understood they had to  
18 do, that price was the same as that was in the  
19 surcharge in the agreement. Correct?

20          A       It was the price, it was a  
21 surcharge, it was a monetary surcharge cap.

22          Q       That was in the agreement.

1           A       Yes.

2           Q       That you had agreed to two years  
3 earlier.

4           A       Right.

5           Q       Okay. Now, Mr. Bond, in your  
6 written testimony - and feel free to take a  
7 look at this, if you want to - in Paragraph 6,  
8 you write there in the middle of the  
9 paragraph, and I'm going to start in the  
10 fourth line there that, "If the NFL were truly  
11 interested" -

12                   MR. PEREZ-MARQUES: Mr. Phillips,  
13 I apologize for the interruption. The figures  
14 that you may be reading from we would prefer  
15 not to be for public.

16                   MR. PHILLIPS: Oh, okay.

17                   MR. PEREZ-MARQUES: Everything but  
18 the numbers is fine.

19                   JUDGE SIPPEL: Are these Comcast  
20 numbers?

21                   MR. PEREZ-MARQUES: They are.  
22 They are. This is, in effect, a proposal.

1 JUDGE SIPPEL: Do we have -- do  
2 you want us to close the door?

3 MR. CARROLL: Well, just don't  
4 read those numbers.

5 JUDGE SIPPEL: Well, that's the  
6 other option.

7 MR. PHILLIPS: I mean, Judge -

8 JUDGE SIPPEL: Can you do it?  
9 Yes?

10 MR. PHILLIPS: Judge, I care about  
11 two people following me, you and the witness.  
12 If you can follow me, and the witness can  
13 follow me when I read it, I can do the rest  
14 without -

15 JUDGE SIPPEL: If I can't, I'll  
16 let you know. And I expect that Mr. Bond will  
17 do the same.

18 MR. PHILLIPS: Okay. Then we'll  
19 do it without. I'll just cover up the  
20 numbers.

21 JUDGE SIPPEL: Actually, the most  
22 important person is the court reporter.



1 MR. PHILLIPS: Okay.

2 JUDGE SIPPEL: Are all the  
3 Blackberries off? I forgot to ask.  
4 Everybody's Blackberry.

5 MR. PHILLIPS: You know, I'm  
6 sorry, Your Honor, mine isn't.

7 JUDGE SIPPEL: Well -

8 MR. PHILLIPS: And I'm the one who  
9 wants to hear everything.

10 JUDGE SIPPEL: That's exactly  
11 right. That's the way it always goes. Okay.  
12 Let's go.

13 MR. PHILLIPS: You know, the  
14 numbers are on the record because this is in.

15 JUDGE SIPPEL: Yes, it's in the  
16 record. I'm sure it's in the record.

17 BY MR. PHILLIPS:

18 Q So, Mr. Bond, if you could follow  
19 me for a second. Here in the middle it says,  
20 "If the NFL were truly interested in carriage  
21 on comparable terms, it should reduce its  
22 price a comparable level." And then there's

1 some numbers there, "per subscriber for long-  
2 term." Do you see that?

3 A I do.

4 Q So, you're not saying that in  
5 order to be carried -- I'm sorry. Strike  
6 that.

7 Versus and Golf channel are on  
8 analog basic. Do I have that right?

9 A Expanded basic.

10 Q Expanded basic. I'm sorry.  
11 That's the broadest general level that you  
12 carry. Correct?

13 A No, broadcast basic is more  
14 distributed.

15 Q Okay. Then expanded basic is the  
16 second most?

17 A Correct.

18 Q And it reaches what, 22 million  
19 homes?

20 A About 20 million.

21 Q Twenty million.

22 A In Comcast System.

1           Q       So, what you're saying there is if  
2 the NFL were interested in being carried at  
3 that time, it should reduce its price to the  
4 level that you've mentioned in here. Is that  
5 how I understand it?

6           A       I'm sorry. Carried at that time?

7           Q       No, if the NFL wanted -- I'm  
8 sorry. If the NFL were interested in being  
9 carried at that same distribution level, it  
10 should reduce its price to this price that's  
11 in the -

12          A       No. I think as I had said in my  
13 earlier deposition testimony, that would be  
14 for D1 carriage.

15          Q       Oh, okay.

16                   JUDGE SIPPEL: And D1 is better  
17 than D2. Is that right?

18                   THE WITNESS: D1 is better than  
19 D2.

20                   BY MR. PHILLIPS:

21          Q       I'm sorry, Mr. Bond, because I  
22 said interested in comparable terms, and

1 what's being compared is Versus and Golf.

2 Versus and Golf aren't carried on D1, are

3 they?

4       A       No. Well, there's a number of  
5 terms that are in an affiliation agreement.

6 But, in this context, what I'm trying to say  
7 here is that would be a D1 price.

8       Q       So, the number here is a D1 price.

9       A       Correct.

10               JUDGE SIPPEL: Where is that  
11 number, again? I'm sorry.

12               MR. PHILLIPS: It's on the fifth  
13 line of Paragraph 6, Your Honor. It's a  
14 range.

15               JUDGE SIPPEL: Got it.

16               BY MR. PHILLIPS:

17       Q       Now, Mr. Bond, it's not a  
18 requirement to be carried at D1 for any  
19 channel to be in that price range, is it?

20       A       No, most are lower.

21       Q       But you have a lot of channels  
22 that are higher than that price range carried

1 on D1, or more broadly distributed. Correct?

2           A       Not that many, actually.

3           Q       But you have some.

4           A       Yes.

5           Q       And, in fact, it's not -- the  
6 price range doesn't define alone what level  
7 you're going to be distributed at, does it?

8           A       Not necessarily.

9           Q       No, there are a number of factors.

10          A       Yes.

11          Q       So, for example, ESPN, which I  
12 think we had testimony earlier today, is, I  
13 think, three or four dollars a subscriber, but  
14 that's carried on your expanded basic.

15 Correct?

16          A       Yes.

17          Q       So, that it's not that in order to  
18 qualify for carriage on D1, that a network has  
19 to be in this small price range. Correct?

20          A       Not necessarily.

21          Q       Then you go on to say that, "The  
22 NFL made no offer for distribution at this

1 price level before choosing, instead, to file  
2 this action." Do you see that?

3 A I do.

4 Q Now, before you accepted the  
5 surcharge, I think we established that you  
6 never discussed any kind of lower price with  
7 the NFL. Correct?

8 A No, they were uninterested in  
9 engaging in a negotiation.

10 Q But you didn't offer -- you didn't  
11 say how about this price, did you?

12 A No. I think what this says is  
13 they made no offer.

14 Q I always was taught it sort of  
15 takes two to dance together, Mr. Bond, so I  
16 take it neither party was discussing price.

17 A No, I was interested in dancing.

18 Q But you didn't make a price offer,  
19 did you?

20 A No.

21 Q Now, do you think -- you're aware,  
22 and let me preface this in case my colleagues

1 across the aisle, if they're going to object.

2 I think this is already out from yesterday,

3 but I was going to discuss for a second

4 Comcast's offer to buy the eight-game package,

5 and the value of that in total.

6 MR. PEREZ-MARQUES: We have no  
7 objection.

8 MR. PHILLIPS: Okay.

9 BY MR. PHILLIPS:

10 Q But you're aware that in late  
11 2005, and early 2006, Comcast made a proposal  
12 to acquire licensing rights for the eight-game  
13 package that's now on the NFL Network.  
14 Correct?

15 A I am.

16 Q And you're aware that Comcast  
17 offered in excess of -- a total value in  
18 excess of \$2 billion to acquire that eight-  
19 game package. Correct?

20 A I don't know if it's in excess of  
21 \$2 billion.

22 Q Well, around -

1           A       It's significant.

2           Q       Around \$2 billion. Is that fair?

3           A       I don't know the exact total. It  
4 was a significant amount of money. I wasn't  
5 involved in architecting that bid.

6           Q       Well, I can show you some  
7 documents, Mr. Bond, to establish it.

8           A       Okay.

9           Q       But take my representation. I  
10 think it's already been established by other  
11 documents that it's -

12          A       That's fine.

13          Q       -- in the \$2 billion plus range.

14          A       That's fine.

15          Q       Now, do you think -- and the idea  
16 from Comcast's standpoint, as you understood  
17 it, was they're going to put that eight-game  
18 package onto Versus. Correct?

19          A       Yes.

20          Q       Now, do you think that Versus  
21 could have stayed in the area of -- that's  
22 discussed here in Paragraph 6, they could have



1 stayed in that price range, if they had paid  
2 \$2 billion plus for that eight-game package to  
3 be shown on it?

4       A       I think the market was going to  
5 determine that.

6       Q       But, Versus was going to have to  
7 raise its price just to break even, wasn't it?

8       A       Presumably, it was going to raise  
9 its price together with this, and other  
10 programming it was adding to the network.

11       Q       But, you understood that adding \$2  
12 billion plus of licensing fees at a minimum  
13 was going to require Versus to go back out to  
14 market with a higher price, didn't you?

15               MR. PEREZ-MARQUES: Objection.  
16 That mischaracterizes the amount of the  
17 licensing fees. Withdrawn.

18               JUDGE SIPPEL: I'm sorry. Am I  
19 supposed to rule on something?

20                       (Laughter.)

21               MR. CARROLL: No, they resolved  
22 it.

1           MR. PEREZ-MARQUES: Not the whole  
2 case, Your Honor, just the objection.

3           MR. PHILLIPS: We decided that the  
4 \$2 billion plus per subscriber.

5           MR. CARROLL: Your chance is  
6 missed.

7           MR. PHILLIPS: No, I said per  
8 subscriber. Your Honor, thank you. If I can  
9 back up just one second.

10           BY MR. PHILLIPS:

11           Q       Mr. Bond, it's my understanding  
12 that you would agree with me that if Versus  
13 had acquired the eight-game package for a  
14 value of \$2 billion plus, that you would have  
15 expected Versus to come to you, who negotiates  
16 on the cable side, that Versus would have come  
17 to you seeking a price increase. Correct?

18           A       Yes.

19           Q       Because they had to pay for those  
20 eight games somehow, isn't it?

21           A       That, and other programming they  
22 were carrying.

1           Q       Right. But even if they hadn't  
2 acquired the programming, that \$2 billion  
3 plus, they were going to have to pay for.  
4 Isn't that right?

5           A       Yes.

6           Q       And you expected they were going  
7 to come to you with either a surcharge, or a  
8 new rate proposal, didn't you?

9           A       Yes.

10                  MR. PHILLIPS: Now, Your Honor,  
11 may I approach?

12                  JUDGE SIPPEL: Please.

13                  BY MR. PHILLIPS:

14           Q       I want to show you a document that  
15 I think is already in evidence. It's NFL  
16 Enterprises Exhibit 98.

17                  JUDGE SIPPEL: Enterprise 98.

18                  (Off the record comments.)

19                  JUDGE SIPPEL: Can anyone on the  
20 NFL side verify that this is actually -- it's  
21 in the record. It's in evidence, it's been  
22 received.

1 (Nod on NFL side.)

2 JUDGE SIPPEL: Thank you. Okay.

3 MR. PHILLIPS: If it's not, we  
4 would move it, Your Honor.

5 BY MR. PHILLIPS:

6 Q Mr. Bond, have you seen this  
7 document before?

8 A I've seen it in preparing for my  
9 testimony.

10 Q And only in preparing for your  
11 testimony?

12 A Yes.

13 Q Because since you're in charge of  
14 the negotiation for rights to be put on the  
15 cable side, and since this looks like a  
16 distribution affiliate strategy overview, I  
17 had assumed that this was prepared in your  
18 area.

19 A No.

20 Q You don't think so.

21 A No, I flipped through it. I think  
22 this is prepared by the programming group

1 headed by Jeff Shell.

2 JUDGE SIPPEL: Now, that would be  
3 Mr. Schmidt?

4 THE WITNESS: Mr. Shell.

5 JUDGE SIPPEL: Mr. Shell, I'm  
6 sorry.

7 THE WITNESS: Yes.

8 MR. PEREZ-MARQUES: Mr. Phillips,  
9 I would just ask, be careful in discussing  
10 this document. There is some confidential  
11 information.

12 MR. PHILLIPS: I understand that.  
13 I'm going to do my best.

14 MR. PEREZ-MARQUES: Thank you. We  
15 appreciate it.

16 MR. PHILLIPS: I'm not so sure  
17 that actually the number that is here that I  
18 would use wasn't spoken by Mr. Burke  
19 yesterday.

20 MR. PEREZ-MARQUES: I don't know  
21 which number you're going to use. That's why  
22 I phrased it generally.

1           MR. PHILLIPS: The same one that's  
2 actually in his testimony. And I think it  
3 actually came out yesterday, but I will --  
4 rather than fight over the record, I -

5           MR. PEREZ-MARQUES: Thank you.

6           MR. PHILLIPS: If you guys don't  
7 want it out, it's secret.

8           BY MR. PHILLIPS:

9           Q       So, Mr. Bond, could you look at  
10 page 10 of this document. I think its Bates  
11 number 179.

12           JUDGE SIPPEL: Well, they're also  
13 internally numbered, so -

14           MR. PHILLIPS: I'm going -

15           JUDGE SIPPEL: They go front and  
16 back. They go front and back.

17           MR. PHILLIPS: They do. And this  
18 is the back side of the fifth page, number 10  
19 at the bottom.

20           THE WITNESS: The slide that  
21 starts, "The key issues" -

22           MR. PHILLIPS: "Key issue, OLN

1 Strategy."

2 THE WITNESS: Yes, I'm looking at  
3 it.

4 BY MR. PHILLIPS:

5 Q And, this document starts -- and  
6 OLN, that's Versus. Correct?

7 A Yes.

8 Q And it starts, "Key question: Can  
9 we achieve the NFL rate increase as of  
10 01/1/07"? Do you see that?

11 A Yes, I do.

12 Q Do you know what the NFL rate  
13 increase is referring to?

14 A I didn't prepare this document.  
15 But I think what this is referring to is if  
16 Versus had gotten the NFL games, it was going  
17 to change the nature of the network, Versus  
18 was going to acquire a much greater amount of  
19 programming over time, sports programming over  
20 time. And I think that's what's being  
21 referred to.

22 Q As the NFL rate increase.

1           A       Right.

2           Q       Okay. Looking down under OLN  
3 there.

4           A       Yes.

5           Q       There's a mention of a right to  
6 surcharge for the NFL. Do you see that?

7           A       Yes.

8           Q       And that means that OLN would have  
9 a right to go out and get surcharges because  
10 of its addition of this \$2 billion plus  
11 licensing rights from the NFL. Correct?

12          A       Well, I don't really -- I  
13 apologize. I didn't prepare this document.  
14 I don't know if this is referring to a  
15 particular negotiation, or a particular  
16 distributor. That seems to be what it says,  
17 but I can't really talk too much to this  
18 document.

19          Q       And the right to surcharge, Mr.  
20 Bond, the right to surcharge is talking about  
21 going out to cable distributors, like  
22 yourself, and trying to negotiation and add-on



1 on the basic price. Correct?

2 MR. PEREZ-MARQUES: Your Honor, I  
3 object. The witness has made quite clear he's  
4 not familiar with this document. It's not  
5 from his part of the company. He has no basis  
6 to testify about it.

7 MR. PHILLIPS: Your Honor -

8 MR. PEREZ-MARQUES: The document  
9 is already in evidence.

10 JUDGE SIPPEL: I'm not so sure  
11 about that. He doesn't claim authorship, or  
12 responsibility for the document. But he does  
13 -- it hasn't been clear yet that he doesn't  
14 understand what's going on here.

15 MR. PEREZ-MARQUES: Very well,  
16 Your Honor.

17 JUDGE SIPPEL: So, I'm going to  
18 overrule the objection at this point.

19 MR. PHILLIPS: Thank you, Your  
20 Honor.

21 BY MR. PHILLIPS:

22 Q Now -

1 JUDGE SIPPEL: Let's try it again.

2 MR. PHILLIPS: Okay, I will.

3 BY MR. PHILLIPS:

4 Q That right to surcharge that when  
5 channels add programming like the NFL did with  
6 the eight-game package, they go out and they  
7 try to add an additional cost to cover that  
8 additional package. Correct?

9 A Sometimes.

10 Q Now, right down here it says that  
11 if the surcharge -- if accepted, the  
12 surcharge, that it includes any packaging  
13 requirements, and then, if rejected, and then  
14 there's that number that we're trying to skip  
15 over, rate card. Now, rate card, that's the  
16 card for pricing that you charge. Correct?

17 A Yes.

18 Q So, is -

19 A Not that I charge.

20 Q No, but that Comcast charges. I  
21 understand. That card -- if rejected, then  
22 this is showing that you're going to go back